REMARKS

Claims 1, 3-15, 18, 19, & 27-31 are pending in this patent application, All pending claims stand rejected under 35 USC §103(a) as obvious over cited art. Claim 27 is hereby amended so as to incorporate the claim limitations of claim 1. No new matter has been added as a result.

Rejection under 35 U.S.C. §103(a)

Claims 1, 3-15, 18, 19, 27-31 stand rejected under under §103(a) over Dev et al (US 6,451,002) in view of Simon (US 2002/0010415). Applicants traverse because the Dev reference, alone or in combination with Simon reference, fail to render obvious each and every claim element of the claimed invention.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on the applicant's disclosure. **MPEP § 2142**, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The cited references fail to establish a prima facie case of obviousness because among other arguments, the cited references fail to teach or suggest all elements of the claimed invention.

The cited references, alone or in combination, simply fail to teach or suggest, among others, the claimed element of the controller. The Patent Office incorrectly reads the Dev reference as teaching the elements: waveform generator, power source, and controller capable of managing the electroporation device to expose tissue adjacent to the needle electrodes to a substantially constant current. A proper reading of the Dev reference provides that the electroporation device disclosed therein includes a pulse generator 115 that communicates with a switch assembly 104 (see Fig. 5, and col.5, ln.30-34, and col. 6, ln. 43-46), which is connected to the needle electrodes via leads (see Fig. 4). In sum, the devices

described in the Dev reference have a generator that is connected to a switch assembly, wherein the switch assembly "enables the selection of opposed pairs of the needles for activation or the application of the electric potential." None of the electroporation devices disclosed in the Dev reference teach or suggest Applicants' claimed element "controller."

There is no discussion in the Dev reference of the claimed controller, which is: "capable of managing the electroporation device to expose tissue . . . to a substantially constant current" and "capable of sampling and monitoring the electroporation voltage and current waveforms." (See claim 1, and dependent claims therefrom: 3-15, and 18-19, and 27-28). Moreover, the claimed device in claims 29-31 requires a controller that is "capable of sampling and monitoring the electroporation voltage and current waveforms" and is "comprised of firmware." Such controller is not mentioned or suggested in the Dev reference. The devices disclosed in the Dev reference describes the generator being connected to a switch assembly; however the switch assembly is merely an electromechanical element that functions to select opposed pairs of needles for activation or application of the electric potential (see col. 5, ln. 30-34, and Fig. 5). The switch assembly is not a "controller" and fails to function as the claimed controller as it fails to manage the device to expose tissue to a substantially constant current, and fails to sample and monitor the electroporation voltage and current waveforms. In addition, in relevance to claims 29-31, the switch assembly does not have firmware. The switch assembly allows for altering or switching pairs of needle electrodes to an active state, but there is no mention that the switch assembly can receive any feedback in order to monitor the electroporation voltage and current waveforms. This clearly supports that a "controller" is absent in the Dev reference.

The Simon reference fails to make up for the deficient teaching of the Dev reference. There is no discussion or suggestion in the Simon reference of the claimed "controller" that would "expose" tissue to a "substantially constant current." Thus, the Dev reference, alone or in combination with the Simon reference, fail to render the claimed invention obvious.

Accordingly, the rejection under Section 103 is improper and should be withdrawn.

CONCLUSION

Applicants submit that the pending claims are in condition for allowance and the same is respectfully requested. Should any question remain, the Examiner is invited to contact the undersigned representative at the provided number, below, if considered helpful to advance this application.

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